103 KAR 16:270. Apportionment; sales factor.

RELATES TO: KRS 141.120, 141.040(5)(b)1, 141.206
STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.120(10)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a weighted sales factor and the denominator of which is four (4). KRS 141.120(10)(b) requires the cabinet to promulgate administrative regulations providing how to determine the sales factor used in the multi-state business income apportionment formula. This administrative regulation provides guidelines for determining the sales factor of a multistate corporation.

Section 1. Definition. (1) "Gross receipts" means the total amount of consideration, including cash, credit, property, and services, paid for the sale, lease, rental, or use of property.

Section 2. The following shall be examples of activities that result in the assignments of gross receipts to Kentucky and shall be included in the numerator described in KRS 141.120(8)(c), if the receipts are business income:
(1) The sale, lease, rental, or other use of tangible personal property in this state;
(2) The sale of real property located in Kentucky;
(3) The lease, rental or other use of real property located in Kentucky;
(4) The provision of services performed entirely in Kentucky during the tax period;
(5) The provision of services performed within and without Kentucky during the tax period;
(6) Intangible property received by a business with a commercial domicile in Kentucky;
(7) Intangible property, if the intangible has acquired a Kentucky business situs;
(8) Franchise fees received from a franchisee located in Kentucky; and
(9) The distributive share of net income received from a general partnership that is required to file a Kentucky income tax return under the provisions of KRS 141.206.

Section 3. Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property shall be assigned to Kentucky if the property is in Kentucky or is shipped or delivered to a purchaser in Kentucky.
(2) Sales of goods destined for delivery outside of Kentucky shall not be assigned to Kentucky, irrespective of method of shipment or delivery.
(3) Sales of tangible personal property to the U.S. Government shall be assigned to Kentucky if the property is shipped from Kentucky.
(4) Receipts from intangibles shall be assigned to Kentucky if the corporation’s commercial domicile is in Kentucky or the intangible has acquired a Kentucky business situs. Examples of receipts from intangibles which are deemed to have acquired a Kentucky business situs shall be franchise fees from a franchisee located in Kentucky and a corporation’s Kentucky distributive share of net income from a general partnership doing business in Kentucky.
(5) Rents or royalties from real or tangible personal property shall be assigned to Kentucky if the property is located in Kentucky or in the case of mobile property the rent is assigned to Kentucky, if the lessee’s base of operations for the property is in Kentucky.
(6) Receipts from the performance of services shall be assigned to Kentucky if the services are performed entirely in Kentucky, or the services are performed both within and without Kentucky but a greater portion is performed in Kentucky than in any other state based on cost of performance.
(7) If the corporation has income from a general partnership, the distributive share income

shall be included in the sales factor. The denominator shall include the total distributive share; the numerator shall include the amount of the distributive share apportioned to Kentucky pursuant to KRS 141.206(9).

Section 4.(1) Receipts from intangible property shall be assigned to Kentucky, regardless of the corporation's or general partnership's commercial domicile, if possession and control of the intangible personal property is localized in connection with a trade or business, creating business situs with Kentucky, so that substantial use or value attaches to the intangible property in Kentucky.

(2) In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:

(a) The use of the intangible property in the continuous course of the trade or business in Kentucky;

(b) The permanency of the location of the intangible property in Kentucky;

(c) The independent control and management of the intangible property in Kentucky;

(d) The possession and control of the intangible property in Kentucky by an independent local agent for the purpose of transacting a permanent business; and

(e) The establishment or use of the intangible property in Kentucky in a manner that attaches substantial use and value of the intangible property to the Kentucky trade or business.

Section 5. This administrative regulation shall apply to tax periods beginning on or after January 1, 2005. (32 Ky.R. 1830; 2290; 33 Ky.R. 71; eff. 8-7-2006.)